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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JO. B., a Person Coming Under the
Juvenile Court Law.

B215769

(Los Angeles County
Super. Ct. No. LK00846)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KAREN D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Senior Associate County Counsel, for Plaintiff and Respondent.

Karen D., the mother of 14-year-old Jo. B. and 13-year-old Ju. B.,¹ appeals from the juvenile court's order, made at the permanency planning hearing (Welf. & Inst. Code, § 366.26, subd. (b)),² appointing O.C. as the children's legal guardian. Karen D., whose parental rights were not terminated, does not argue the children should have been returned to her or challenge the juvenile court's finding the children were not adoptable, but contends only that the court abused its discretion when it selected legal guardianship rather than long-term foster care as their permanent plan. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2007 the Los Angeles County Department of Children and Family Services (Department) filed a petition pursuant to section 300, subdivisions (b) and (g), alleging Karen D.'s illicit drug abuse had created a detrimental home environment that placed Jo. B. and Ju. B. at risk of physical and emotional harm and damage. The petition further alleged Ju. B.'s father, James B., had a history of alcohol abuse that rendered him incapable of providing his son with regular care and created a detrimental home environment. (James B. also had suffered a stroke and was in failing health; during the pendency of these proceedings, he suffered a second, disabling stroke.) Jo. B.'s father, M.B., was alleged to have failed to provide Jo. B. with the basic necessities of life including food, clothing, shelter and medical care. The children were taken into protective custody. The Department reported it could not locate any relatives to consider for placement.

¹ In an effort to maintain the privacy of children involved in juvenile cases in the face of the ever-increasing ability of modern technology to breach the confidentiality of juvenile court records, the court now uses a protective nondisclosure policy known as "double suppression." Initials are substituted for both the first and last names of each child who is a party to the action, replacing our traditional practice of including the child's first name and last initial. The double suppression policy also applies to other family members when nondisclosure is necessary to preserve the confidentiality of the party. In this case, however, because both children have the same initials, we refer to the older child as Jo. B. and the younger child as Ju. B.

² Statutory references are to the Welfare and Institutions Code.

In July 2007 the Department reported it had investigated the home of a paternal aunt for possible placement of the children, but concluded such a placement would not be in the children's best interests because of the aunt's criminal history. The Department next attempted to investigate the paternal grandmother of the children's older half-sibling and an adult sibling living in Tennessee as possible placements. These efforts were unsuccessful, and Jo. B. and Ju. B. continued to reside in foster homes—initially in Riverside County and then in Los Angeles County with foster mother O.C.

The section 300 petition was sustained as amended on October 30, 2007. Reunification services were ordered for Karen D. and the two fathers, James B. and M.B. In its February 2008 report for the six-month review hearing (§ 366.21, subd. (e)) the Department stated the children's foster mother, O.C., was interested in becoming the boys' legal guardian.

In a July 2008 report in connection with the 12-month review hearing (§ 366.21, subd. (f)), the Department stated the children appeared to be secure and reasonably comfortable in O.C.'s home. The children's counsel, however, informed the court the children wanted to move back to their previous placement in Riverside County because Jo. B. was concerned about the new high school he would be attending that fall if he remained in Los Angeles. In response, the Department indicated the prior foster parent was not interested in having both children returned to his home, but would consider caring for one child if the brothers were placed separately. The Department also noted some concern about the prior caregiver's lack of attention to the boys' medical needs.

At a continued, contested 12-month review hearing in August 2008 the court terminated reunification services as to Karen D. and James B. (they were previously terminated as to M.B.), found a possibility of guardianship or adoption as a permanent plan and set a selection and implementation hearing for December 19, 2008 to select a permanent plan for Jo. B. and Ju. B. (§ 366.26.) No party sought writ review of the juvenile court's order setting a hearing under section 366.26. (See Cal. Rules of Court, rules 8.450, 8.452.)

In an information report filed with the court on December 19, 2008, the Department stated Ju. B. and Jo. B. appeared bonded with O.C. and attached to their current home environment, where they had been living for 16 months. The Department also described the children as doing well in O.C.'s home. The Department recommended the court appoint O.C. as the children's legal guardian and indicated she was motivated to become their legal guardian. However, the Department also reported it had located a maternal uncle who lived in Mississippi. The uncle did not appear to be prepared to care for the children immediately but suggested he might be willing to do so after he got to know them and had built a relationship with them. A Christmas visit by the children to Mississippi was discussed. The Department's children's social worker assigned to the case stated the children had indicated a desire to live with their maternal uncle if he was interested in adopting them.

The section 366.26 hearing was continued to February 2009 because of a notice issue. At the continued hearing Karen D. informed the court through counsel she was not opposed to the legal guardianship and stated she wanted to establish visitation with her children. The Department continued to recommend that O.C. be appointed as the children's legal guardian and explained it did not want dependency jurisdiction terminated because it was still looking at the children's maternal uncle as a possible out-of-state relative placement. Apparently because Karen D. did not want the children to move from California, however, the maternal uncle expressed additional reservations about placing the children with him.

Following another continuance of the hearing, on March 10, 2009 the children's counsel advised the court the children wanted a new placement and were opposed to the appointment of O.C. as their legal guardian. During the preceding month the boys had vacillated every week as to whether they wanted to stay with O.C., who they accused of yelling at them all the time. The children's therapist, on the other hand, stated O.C. was providing adequate care for the children. Karen D., as well, now expressed opposition to the legal guardianship (based on the children's desire for a new placement). The court

directed the parties and O.C. to participate in a team decisionmaking meeting to discuss placement issues.

Prior to the team decisionmaking meeting on March 17, 2009, the children had said O.C. yelled and cursed at them and repeatedly showed favoritism to another foster child in her home (a cousin of O.C.'s). Ju. B. also accused O.C. of slapping him in the face several months earlier. O.C. denied the accusations. At the meeting the children's therapist observed the biggest behavioral issue with the two boys was their tendency to exaggerate O.C.'s treatment of them. The children retracted their complaints about O.C.'s constant yelling and cursing, and both boys admitted they had lied about O.C. slapping Ju. B. Jo. B. and Ju. B. said they wanted O.C. to become their legal guardian. Karen D. and O.C. both agreed with the recommendation of a legal guardianship.

At a continued hearing on April 20, 2009 the two boys confirmed their agreement with the recommendation for legal guardianship. Karen D., however, again changed her mind and, according to her counsel, asserted it was too soon to determine a permanent plan for the children. After reviewing all the reports, the court found the children were not adoptable, found that legal guardianship would be in their best interest and appointed O.C. as their legal guardian. Karen D. was granted weekly monitored visitation.

Karen D. filed a timely notice of appeal.

DISCUSSION

The juvenile court has five choices at a permanency planning hearing. In order of preference they are (1) terminate parental rights and order the child or children be placed for adoption; (2) appoint a relative with whom the child or children is currently living as legal guardian; (3) if appropriate findings are made pursuant to section 366.26, subdivision (c)(3), identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (4) appoint a legal guardian; or (5) order long-term foster care. (§ 366.26, subd. (b)(1)-(5).)

Based on the undisputed facts (neither Jo. B. nor Ju. B. was living with a relative) and unchallenged findings of the juvenile court (the boys are not adoptable), options (1),

(2) and (3) are unavailable in this case. The court's selection of option (4) rather than option (5) is reviewed for an abuse of discretion (see *In re Stephanie M.* (1994) 7 Cal.4th 295, 318 [custody determination in a dependency proceeding is reviewed for abuse of discretion]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [decision as to what kind of custody is appropriate for a dependent child "is typically reviewed for abuse of discretion"]), keeping in mind the Legislature's express preference for legal guardianship rather than long-term foster care. (See *In re Jasmine P.* (2001) 91 Cal.App.4th 617, 621 ["[l]egal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found"]; *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1107 [juvenile court subject to mandatory preference for legal guardianship over long-term foster care].)

The juvenile court's finding O.C. was a suitable guardian is amply supported by the record. O.C. had cared for Jo. B. and Ju. B. for nearly two years by the time of the final section 366.26 hearing. The Department's reports consistently indicated she was providing adequate care for the children and they were progressing well in her home. O.C. repeatedly expressed her desire to become Jo. B.'s and Ju. B.'s legal guardian. The sporadic accusations of misconduct were all subsequently disavowed by the children, and their therapist confirmed they exaggerated any complaints regarding O.C.'s treatment of them.

Similarly, the finding legal guardianship was in the children's best interest was firmly grounded in the record before the court. No parent was available to care for these children, and the Department's extensive efforts to locate a relative with whom they might be placed were uniformly unsuccessful. To be sure, as should be expected from teenage boys who had experienced significant instability in their lives before finally being placed with O.C., whenever it appeared there might be a relative who could provide a home for them, they were anxious to explore the opportunity. But all such possibilities (the maternal uncle in Mississippi, a paternal aunt, the paternal grandmother of an older half-sibling, an adult sibling in Tennessee, another sibling's brother-in-law)

proved illusory. O.C. was the one adult that promised stability and permanency. Jo. B. and Ju. B. themselves recognized that at the last hearing on April 20, 2009 when they indicated they were in favor of legal guardianship.

In sum, there was no abuse of discretion in selecting legal guardianship, rather than long-term foster care, as the permanent plan or in appointing O.C. as the children's legal guardian.

DISPOSITION

The juvenile court's order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.